

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ROBERT M. HINES,)	
)	
Plaintiff,)	
)	
v.)	Case No.10-CV-4-GKF-FHM
)	
TERRA INDUSTRIES, INC., and)	
TERRA NITROGEN, LIMITED)	
PARTNERSHIP,)	
)	
Defendants.)	

OPINION AND ORDER

This matter comes before the court on the Motion to Remand. [Doc. No. 74] of defendant Terra Nitrogen, Limited Partnership (“Terra Nitrogen”). Plaintiff does not object to the motion. [Doc. No. 79].

Plaintiff filed suit against Terra Industries, Inc. (“Terra Industries”) on October 28, 2008, in Rogers County District Court. At that time, Terra Industries was the only defendant named. Terra Industries removed the case to his court on January 5, 2010, based on diversity jurisdiction. [Doc. No. 2]. On May 6, 2010, plaintiff filed his First Amended Complaint joining Terra Nitrogen as a defendant. [Doc. No. 25]. In its answer to the First Amended Complaint, Terra Nitrogen admitted that it is a “foreign limited partnership.” [Doc. No. 28]. Terra Nitrogen also identified itself as a “Delaware limited partnership.” [Doc. No. 30]. Terra Industries, was dismissed from the action by joint stipulation on October 6, 2010. [Doc. No. 47].

Terra Nitrogen is a limited partnership formed pursuant to Delaware law. Terra Nitrogen’s partners are (a) Terra Nitrogen GP Inc., a Delaware corporation with its principal place of business in Iowa; (b) Terra Nitrogen Corporation, a Delaware corporation with its

principal place of business in Iowa; and (c) Terra Nitrogen Company, L.P., a limited partnership formed under the law of Delaware with its principal business offices located in Iowa. [Doc. No. 77-1, Affid. of Peggy Rebstock, ¶¶3-4]. The partners of Terra Nitrogen Company, L.P. include (a) Terra Nitrogen GP Inc.; (b) Terra Nitrogen Corporation; (c) Terra LP Holdings, LLC, a Delaware limited liability company with its principal place of business in Iowa; and (d) Terra Capital, Inc.; and (e) members of the public. Roughly 24% of the units of Terra Nitrogen Company, L.P. are publicly held. [*Id.*, Rebstock Affid., ¶5]. At any specific time, Terra Nitrogen Company, L.P. may not be aware of the state of residence of its public owners. However, in February 2010, Terra Nitrogen Company, L.P. sent more than 770 copies of its K-1 Schedule to addresses in Oklahoma, including addresses of individuals. [*Id.*, Rebstock Affid., ¶6].

The Tenth Circuit has stated the following regarding the citizenship of a limited partnership for the purpose of establishing diversity of jurisdiction:

In *Carden v. Arkoma Associates*, the Supreme Court held that the citizenship of a limited partnership for diversity purposes depends on the citizenship of all its members and left to Congress the task of extending the corporation-citizenship rule of 28 U.S.C. §21332(c) to unincorporated entities. 494 U.S. 185, 195-97, 110 S.Ct. 1015, 108 L.Ed.2d 157(1990). In order to effect removal under 28 U.S.C. §1441(a) based on diversity of citizenship, therefore, a limited partnership must show that the citizenship of all its general and limited partners is diverse from the plaintiff.

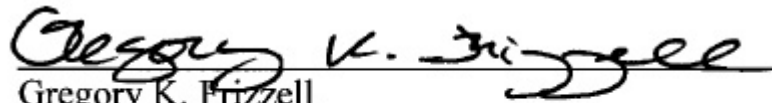
Jenkins v. MTGLQ Investors, 218 Fed.Appx. 719, 723 (10th Cir. 2007). *See also, RMP Consulting Group, Inc. v. Datronic Rental Corporation*, 179 F.R.D. 614, 615-16 (N.D. Okla. 1998), *rev'd on other grounds* 189 F.3d 478 (10th Cir. 1999) (unpublished opinion).

Under Fed.R.Civ.P. 12(h)(3), “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Based on the admissions made by defendant in its Motion to Dismiss and the supporting affidavit of Peggy Rebstock, the court

finds that some of the public owners of Terra Nitrogen Company, LP, a partner in defendant Terra Nitrogen Limited Partnership, are Oklahoma citizens. Therefore, Terra Nitrogen Limited Partnership is an Oklahoma citizen and diversity of citizenship is lacking.

Defendant's Motion to Remand [Doc. No. 74] is granted and this case is remanded to Rogers County District Court.

ENTERED this 21st day of December, 2010.


Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma